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Attorney for Respondents.

**BEFORE THE ARIZONA CORPORATION COMMISSION**

	)	<b>Docket No. S-20837A-12-0061</b>
<b>In the matter of:</b>	)	
	)	<b>RESPONDENT'S MOTION TO VACATE</b>
<b>OUT OF THE BLUE PROCESSORS, LLC, an</b>	)	<b>EVIDENTIARY HEARING SCHEDULED</b>
<b>Arizona limited liability company, d/b/a</b>	)	<b>TO BEGIN ON APRIL 28, 2014.</b>
<b>Out of the Blue Processors II, LLC;</b>	)	
	)	
<b>and</b>	)	<b>(ASSIGNED TO: HON. MARC E. STERN,</b>
	)	<b>ADMINISTRATIVE LAW JUDGE</b>
<b>MARK STEINER and SHELLY STEINER,</b>	)	
<b>husband and wife.</b>	)	
	)	
<b>Respondents.</b>	)	

Arizona Corporation Commission

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Respondents, Out of the Blue Processors, LLC. and Mark Steiner, MOVE for an  
 Order vacating the hearing at present scheduled to begin on April 28, 2014, and  
 rescheduling the same on a date convenient for the Commission and the Administrative  
 Law Judge on or after October 20, 2014. In support of their motion, Respondents, by  
 counsel, show:

## Basis for Respondent's Motion to Vacate

Counsel is advised that a large number of the Members of (investors in) Out of the Blue Processors LLC ("Blue") are satisfied with their investments in Blue and are concerned that, if an evidentiary hearing occurs at this time and results in a finding of technical violation, the remedies sought by the Securities Division may and very probably will interfere with Mr. Steiner and Lunsford Consulting LLC continuing to facilitate several transactions which those Members (investors) reasonably believe are nearing completion. Completion of any of those transactions is likely, in the view of those Members (investors), to provide significant investment returns to them, as investor Members of Blue.<sup>2</sup> They do not believe it is appropriate for the Commission, through its Securities Division, in its zeal to enforce the Arizona Securities Act, to prevent those few sophisticated citizens<sup>3</sup> who were given an opportunity to invest in Blue, each of whom made a knowledgeable and informed decision to invest, from realizing the investment yields they bargained for, before those investments have reached a point in their lives at which success or failure can be identified clearly and with certainty.<sup>4</sup> That is precisely the result which may occur, however, if the Securities

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<sup>2</sup> Counsel is informed that some of those satisfied Members have written to the Commissioners to that affect.

<sup>3</sup> Fewer than 35 persons invested in Blue; most were "accredited investors," in fact and were reasonably believed by Mr. Steiner to be so when they made their investment in Blue.

<sup>4</sup> Success has not yet been fully achieved; failure has most definitely not occurred and now may be said to be highly unlikely.

1 Division is permitted to push this proceeding to an evidentiary hearing at this  
2 premature time.

3  
4 The Securities Division seeks, for example, the remedy of restitution by Steiner.  
5 Restitution, if awarded, would prevent the investor Members of Blue from realizing the  
6 returns they expect to receive, not only from the transactions which are nearing  
7 completion, but from all future transactions in which Lunsford Consulting may act as  
8 finder/facilitator, many of which are far enough along the development process to  
9 warrant a belief that at least some of them may provide substantial investment returns.  
10 That is an aspect of the Blue offering that the Securities Division steadfastly refuses to  
11 understand.  
12

13  
14 Counsel has been informed that this motion will be objected to by the Division as  
15 being yet another delay in a saga begun two years ago, at which time Mr. Steiner  
16 assured the Commission that investment success was just around the corner, if the  
17 Commission would wait and see. Mr. Steiner was incorrect in that evaluation, although  
18 he had a substantial basis for believing his evaluation was correct at the time he  
19 communicated it.  
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22  
23 The point is not whether Mr. Steiner was right or wrong at that time, or whether  
24 the several transactions which Mr. Steiner and the investor Members of Blue believe  
25 are nearing completion are, in fact, nearing completion. The point is that a premature

1 decision by the Commission may deprive knowledgeable people who invested  
2 substantial monies in good faith of an opportunity to receive the benefit they continue  
3 to expect from their investment in Blue. Governmental action should not produce such  
4 a result in the United States of America – or Arizona.  
5

6 Counsel believes that Blue's offering will be found, in fact and law, to have been  
7 an offering within the safe harbor of Rule 506 adopted by the Securities Exchange  
8 Commission of the United States (the "SEC"). If the Administrative Law Judge and the  
9 Commission determine that is so, it then will be clear that the Commission is prohibited  
10 by Section 18(a) of the Securities Act of 1933 from pursuing the failure of Blue and  
11 Steiner to seek Arizona registration of Blue's offering. Respondent also asserts that  
12 Blue's offering qualifies as a Limited Offering, exempt from registration under the  
13 Commission's own rules. Those are the issues to be considered at the presently  
14 scheduled hearing. Counsel concedes that there are issues involving the interpretation  
15 of the provisions of Rule 506 and the Limited Offering exemption which, if resolved  
16 against Blue, would make those provisions inapplicable to Blue's offering. For the  
17 reasons stated above, making that decision at this time is premature and could damage  
18 unfairly the persons the Commission is supposed to be protecting.  
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1                                   **There Is No Compelling Urgency Here**

2           There is no compelling urgency in the Securities Division's case. Its witnesses are  
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4 not likely to be lost (and there are ways to avoid that result, should the Securities  
5 Division be concerned about any witness). By contrast, serious, permanent and easily  
6 avoidable damage is likely to occur to the Blue Members (investors), if a hearing  
7  
8 produces a decision adverse to Blue and Mr. Steiner and the remedies the Securities  
9 Division seeks are granted. For that reason, this motion should be granted.

10                                   **The Unique Nature of Blue's Offering**

11  
12           In considering this motion, it is important that the Commission and the  
13 Administrative Law Judge understand the highly unusual nature of Blue's offering and  
14 the unique investment opportunity that it offered the few persons offered an  
15 opportunity to and who did choose to invest.

16  
17           Most securities offerings seek capital for a specific venture. Investors are offered  
18 a share of the profit, if any, from that specific venture. The Blue offering involved no  
19 such specific venture.

20  
21           The Blue offering sought capital to enable Lunsford Consulting LLC to pursue the  
22 relationships that it and its principals, William "Boyd" Lunsford<sup>5</sup> and Mark Steiner, had  
23 developed with persons who had become senior managers of important Chinese  
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<sup>5</sup> Mr. Lunsford died during 2013 after nearly 25 years of dealings with Chinese business leaders many of whom have moved into very high positions within the Chinese government and its state owned businesses.

1 government owned business enterprises that were seeking business opportunities,  
2 primarily in Africa and South America. Messrs. Lunsford and Steiner lacked the capital  
3 to permit them to undertake the activities necessary to accomplish the work involved  
4 in "finding and facilitating" the infrastructure projects for the Chinese enterprises led  
5 by their business associates in China. Mr. Steiner, accordingly, set out to raise the  
6 capital needed from a small number of his business associates and friends. Blue was a  
7 dormant limited liability company he had formed for a different purpose years earlier.  
8 Mr. Steiner used Blue as a vehicle for raising the capital Lunsford Consulting needed.

12 Several Chinese enterprises had grown, within China, an expertise in  
13 infrastructure development. The Chinese government has sought for several decades to  
14 develop export markets in other countries. Developing countries that lack both the  
15 expertise and the capital to undertake major infrastructure projects themselves are  
16 such an export market for Chinese heavy industries. Messrs. Lunsford and Steiner were  
17 given the opportunity to "find and facilitate" suitable projects for several Chinese heavy  
18 industry enterprises. Lunsford Consulting LLC will be paid a fee for the efforts of its  
19 principals, Messrs. Lunsford and Steiner, if, as and when an infrastructure project  
20 reaches the stage of final agreement and funding; that is, when the (i) the design and  
21 construction engineering are completed, (ii) when all governmental approvals needed  
22 to permit the project to proceed have been received, and (iii) when the funds necessary  
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1 to construct the facility and manufacture the equipment to be used in the project are  
2 committed and are actually available for immediate disbursement to commence the  
3 construction and manufacturing work. The government of China has segregated  
4 substantial monies for the purpose of financing infrastructure projects in developing  
5 countries. When an infrastructure project has been identified, approved and contracts  
6 agreed with the owners (governmental or private) of an approved project, financing  
7 becomes available from the appropriate Chinese bank.

10 Several projects were identified by Messrs. Lunsford and Steiner in 2008. Some  
11 of them were approved by the Chinese participants, and were pursued by Messrs.  
12 Lunsford and Steiner with African participants. Those projects proved to be unsuitable  
13 for various reasons. So others, not previously identified, were pursued.

16 That illustrates the major difference between the Blue offering and more  
17 traditional securities offerings. The Blue Members (investors) were offered an  
18 opportunity to participate in the relationships Lunsford Consulting had with its Chinese  
19 business associates. Those relationships assure the Blue investors that they will  
20 participate in whatever fees Lunsford Consulting receives from every project that  
21 Lunsford Consulting might "find" and "facilitate" going forward. The finding and  
22 facilitating activities of Lunsford Consulting has involved attending all significant  
23 meetings in the several countries involved to facilitate the discussions and to assist in

1 the resolution of issues. And it has involved support for Messrs. Lunsford and Steiner  
2 and their respective families during the nearly six years since the first Member interests  
3 in Blue were sold.  
4

5 All monies invested by Blue's Members have been used by Lunsford Consulting  
6 to find, that is to identify, many possible projects, to obtain approval for them from the  
7 management of the Chinese enterprises that might undertake them, and to facilitate,  
8 and to pursue (negotiate) the participation of the owners of the projects to determine  
9 whether a transaction can be achieved.  
10  
11

12 When its early efforts failed, Lunsford Consulting found and pursued other  
13 projects. In 2009 Lunsford Consulting identified two electrical energy generation  
14 projects in Nigeria, Africa's most populous nation. Both are very large projects involving  
15 great expenditures and, therefore, potentially very large fees for Lunsford Consulting.  
16 Both projects remain "in the works." Only one, however, a 1200 megawatt coal fired  
17 electric generating plant in Kogi State, is nearing the last pre-construction development  
18 stage, the actual funding of the project.<sup>6</sup> The Nigerian owner of the Kogi project has  
19 announced publicly that he expects construction to begin during the fourth quarter of  
20 this year and the Nigerian government has signed off on its approval. If, as is expected,  
21 but cannot assured, that occurs, the first tranche of construction financing should be  
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<sup>6</sup> The 1200 megawatt coal fired electrical generating plant in Kogi State, Nigeria, involves an investment now estimated to be significantly greater than the \$1.5 billion U. S. Dollar estimate involved in 2012.



1 disbursed by October of this year, at which time Lunsford Consulting should receive its  
2 fee based on that disbursement and, accordingly, the Blue Members (investors) will  
3 receive their promised share of that fee. Lunsford Consulting should, thereafter, have  
4 sufficient internal capital to fund its further finder/facilitator work. The Blue Members  
5 (investors) will, however, continue to share in ALL Lunsford Consulting fees received  
6 from China.  
7  
8

9 Counsel is aware that this matter has been pending for a long time. Projects of  
10 the size of the Kogi State, Nigeria, 1,200 MW coal fired power plant are complicated  
11 and take substantial time to complete. Six or seven years is not unusual in the United  
12 States, without the complication of multi-national involvements.  
13

14 Business consultants are not paid until the initial closing and the funding of at  
15 least the first tranche of the project financing. Since those events are in the hands of  
16 others, the timing of the final development work and the funding is totally out of  
17 Lunsford Consulting's control.  
18  
19

20 In addition to the Kogi State, Nigeria, project, there are several other projects  
21 nearing the funding stage of development. Two hydroelectric power projects in  
22 Ecuador are particularly promising. Both involve other participants (an American and a  
23 Canadian) who had the projects well along in the development process, but lacked a  
24 connection to China and the expertise and capital the Chinese enterprises with which  
25

1 Lunsford Consulting is connected could provide. Lunsford Consulting took on those  
2 projects last year. Unlike the Kogi State, Nigeria, project, both the Ecuador projects are  
3 sovereign guaranteed projects, which makes the funding fairly simple (by comparison  
4 with privately owned projects) when the parties (Chinese and Ecuadorian government  
5 units) have agreed on the engineering documents and the price. Those negotiations are  
6 in the final stages at this time. The El Tigre River project is nearest to completion. It  
7 awaits only final approval by the Prefect of Pichincha Province of Ecuador.<sup>7</sup> When that  
8 approval is given, it is anticipated that final funding approval and initial disbursements  
9 by the Chinese bank involved, already preliminarily approved on the basis of the  
10 sovereign guaranty which the government of Ecuador has already provided, will occur.  
11 It is anticipated that the funding may take 45 to 60 days following the approval by the  
12 Prefect of Pichincha Province. Lunsford Consulting's fee should be paid from the initial  
13 disbursement. The Blue Members (investors) will receive the payments promised them  
14 promptly following Lunsford Consulting's receipt of its fee.

20 Another hydroelectric project in Ecuador, on the Jondachi River, is at a similar  
21 stage in the development process. It also enjoys an already granted sovereign guaranty  
22 from Ecuador's government and has been approved preliminarily by the Chinese bank.

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25 <sup>7</sup> Illustrative of the nature of projects of this kind, it had been anticipated that a meeting in Ecuador would occur during April, at which it seemed likely that final approval would occur. The Prefect's schedule of other business has required a postponement of the meeting until May, in part because the scheduled hearing in this matter prevents an earlier meeting.

1 As with the El Tigre River project, the Chinese enterprise involved in negotiating the  
2 contract with the Ecuadoran government has submitted its bid and final approval lies  
3 on the desk of the government authorities in Ecuador.  
4

5 From the foregoing it should be clear that any restrictions put on Mr. Steiner's  
6 activities, legal or economic, would be highly likely to interfere with the completion of  
7 the projects involved. It also should be clear that Mr. Steiner has diligently since 2008  
8 devoted his full time and best efforts to finding and facilitating the projects discussed,  
9 and several others.<sup>8</sup> ALL of those projects, when and if they are consummated by  
10 Lunsford Consulting, will result in the payment of substantial fees to Lunsford  
11 Consulting and the payment by Lunsford Consulting to Blue of the portion of Lunsford's  
12 fee income promised to it and the distribution to Blue's Members (investors) of their  
13 respective interests in Blue's receipts.  
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16

17 This Motion to Vacate and continue the hearing scheduled to begin on April 28,  
18 2014 is, accordingly, reasonable under the unusual circumstances discussed above.  
19 Compliance with the exchange of lists of witnesses and exhibits, attendance to his  
20 personal duties in connection with April 15 of each year and attention to other  
21 compelling client matters delayed the submission of this Motion.  
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25 <sup>8</sup> The business day in Nigeria begins 8 hours before the customary business day begins in Arizona. The business day in Beijing, China is 15 hours ahead of Arizona time. Mr. Steiner's "full time," accordingly, is sometimes spent in the middle of the night or at other inconvenient times. Those facts were known to the investors in Blue when they chose to make their investments.

1 DATED: April 18, 2013.

2 Respectfully submitted,

3 

4 Arthur P. Allsworth

5 Attorney for Out of the Blue Processors LLC  
and Mark Steiner

6 Original filed BY HAND DELIVERY on  
7 April 18, 2014, with 12 copies to:

8 Docket Control, Arizona Corporation Commission  
9 1200 West Washington  
Phoenix AZ 85007

10 -and-

11 Copy served by email, on the above date,  
12 addressed as follows:

13 Steve Womack, Esquire at  
14 at SWomack@AZCC.GOV

15   
16 \_\_\_\_\_